

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

TQ DELTA, LLC,

Plaintiff,

v.

NOKIA CORP., NOKIA SOLUTIONS AND
NETWORKS OY, and NOKIA OF
AMERICA CORP.,

Defendants.

Civil Action No. 2:21-CV-00310-JRG
(Lead Case)

Civil Action No. 2:21-CV-00309-JRG
(Member Case)

NOKIA OF AMERICA CORP.,

Third-Party Plaintiff,

v.

BROADCOM CORP., BROADCOM INC.,
and AVAGO TECHNOLOGIES
INTERNATIONAL SALES PTE. LTD.,

Third-Party Defendants.



**THIRD-PARTY DEFENDANTS' OPPOSED MOTION FOR LEAVE TO FILE
RESPONSE TO THIRD PARTY PLAINTIFF'S NEW ARGUMENTS AND EVIDENCE**

Third-Party Plaintiff Nokia of America Corp. ("Nokia") improperly introduces new arguments and evidence in its Sur-Reply in Opposition to the Motion to Dismiss (the "Sur-Reply") (Dkt. 139). As such, pursuant to Local Rule CV-7(k), Third-Party Defendants Broadcom Corp., Broadcom Inc., and Avago Technologies International Sales Pte. Ltd. (collectively, "Broadcom") respectfully request leave to file a response to Nokia's new arguments and evidence.

As seen in its Sur-Reply, [REDACTED]
[REDACTED]. See Dkt. 139-2; see also Sur-Reply at 4-6. However, pursuant to this Court's rules, "arguments made in a reply brief are limited to those issues raised in the response, and arguments made in a sur-reply brief are likewise limited to issues raised in the reply." *Corinth Invs. Holdings, LLC v. Evanston Ins. Co.*, No. 4:13-CV-00682, 2014 WL 4222168, at *5 (E.D. Tex. Aug. 25, 2014). Furthermore, it is improper for a party to submit new evidence in connection with a sur-reply when that evidence "should have, and could have, been filed at the same time" as the response to the underlying motion. *Deutsche Bank Nat'l Tr. Co., as Tr. of Aames Mortg. Inv. Tr. 2005-1 v. Mortberg*, No. 4:19-CV-00875-ALM-CAN, 2020 WL 7658065, at *7 (E.D. Tex. Nov. 16, 2020), report and recommendation adopted, No. 4:19-CV-00875, 2021 WL 716750 (E.D. Tex. Feb. 24, 2021). [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. As noted by the

Fifth Circuit, court "that have expressly addressed the issue of when a district court may rely on arguments and evidence presented for the first time in a reply brief have held that a district court

may rely on such arguments and evidence as long as the court gives the nonmovant an adequate opportunity to respond." *Corinth Invs. Holdings, LLC v. Evanston Ins. Co.*, No. 4:13-CV-682, 2014 WL 4222168, at *5 (E.D. Tex. Aug. 25, 2014).

Therefore, Broadcom respectfully requests the Court grant it leave to file a Response in Support of its Motion to Dismiss, which is filed concurrently herewith.

Dated: May 20, 2022

Respectfully submitted:

GILLAM & SMITH, LLP

/s/ Melissa R. Smith

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BROADCOM CORP., BROADCOM INC., AND
AVAGO TECHNOLOGIES INTERNATIONAL
SALES PTE. LTD.*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CERTIFICATE OF CONFERENCE

On May 17, 2022, counsel for Broadcom contacted counsel for Nokia regarding this motion. Counsel for Nokia stated that it opposed this motion.

/s/ Melissa R. Smith

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on May 20, 2022, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3):

/s/ *Melissa R. Smith*